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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,576	01/22/2002	Gabriele Camomilla	2501-1001	6355

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EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

'Office Action Summary

Application No.

10/031,576

Appli ant(s)

CAMOMILLA ET AL.

Examiner

Gary Hartmann

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-- The MAILING DATE of this communication appears on the cov r sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____ .
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____ .
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: . |

Application/Control Number: 10/031,576

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DETAILED ACTION

Drawings

1. The drawings are objected to because the lines are not uniformly thick and well drawn. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The abstract of the disclosure is objected to because it contains legal phraseology. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. The claims are generally narrative and indefinite, failing to conform with current U.S. patenting practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 2, 4, 7, 9, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Camomilla et al. (U.S. Patent 5,697,728). Since applicants are very familiar with this reference, further discussion is unnecessary. Regarding claims 4 and 19, note that the water and noise absorbers, respectively, have not been positively recited and, therefore, do not further limit the claims.

8. Claims 1, 3, 4, 6, 7, 9, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Arthur (U.S. Patent 6,276,667). Arthur '667 discloses a barrier having a dampening element (25) made of deformable material and forming a socle at the foot of a resisting element (10).

The dampening element is made of internally stiffened plastic (Figures 2 and 3, for example).

The dampening element is hollow and, therefore, could be filled with water or be inserted with noise absorbers.

Regarding claim 6, the phrase "may be performed," along with the additional language in the alternative, presents a claim which does not further limit parent claim 3.

The anchors are screws.

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The upper and lower fixing points meet the recitation of an additional bracket.

The barrier substantially corresponds to the shape of a New Jersey barrier.

9. Claims 1, 3, 4, 6, 7, 9, 11, 14, 16, and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Arthur (U.S. Patent 6,533,250). Arthur '250 discloses a barrier having a dampening element (25) made of deformable material and forming a socle at the foot of a resisting element (10).

The dampening element is made of internally stiffened plastic (Figures 2 and 3, for example).

The dampening element is hollow and could be filled.

The anchors are screws/bolts which are inherently ductile.

The upper and lower fixing points meet the recitation of an additional bracket.

Further regarding claim 11, there are concentrated dissipaters (56).

The barrier substantially corresponds to the shape of a New Jersey barrier.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Camomilla et al. or Arthur as applied above, and further in view of Thompson (U.S. Patent 4,681,302).

Thompson teaches the wave formation (formed by 34, 35) on the outside of a barrier (Figure 48,

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for example) to increase vehicular safety. For this purpose, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the wave formation of Thompson with any of the Camomilla et al. or Arthur patents.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Camomilla et al. or Arthur as applied above, and further in view of Peterson et al. (U.S. Patent 3,712,589). Peterson et al. teaches a shoe (2) disposed below a barrier in order to assist in impact absorption. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this shoe with any of Camomilla et al. or Arthur for this purpose.

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arthur '250 in view of Peterson et al. as discussed regarding claim 8, above.

14. Claims 10 rejected under 35 U.S.C. 103(a) as being unpatentable over any of Camomilla et al. or Arthur as applied above. Screens are commonly mounted on median barriers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a screen with any of Camomilla et al. or Arthur in order to prevent glare from oncoming vehicles, for example.

15. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arthur '250 as discussed regarding claim 10, above.

16. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arthur '250 as applied above, and further in view of Christensen (U.S. Patent 5,836,714). Christensen teaches optionally using polystyrene in order assist in cushioning. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used polystyrene with Arthur in order to improve impact absorption, as is well known in the art.

17. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arthur '250 as applied above. Arthur shows the dampening element to be attached; however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added a non-attached dampening element in order to further increase safety in a potentially hazardous situation.

Conclusion


18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references teach barriers.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

gh
June 7, 2003



Gary Hartmann
Primary Examiner
Art Unit 3671